

**UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA**



**PRO SE HABEAS CORPUS HANDBOOK**

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A Manual For

**STATE PRISONERS**

**FILING FEDERAL HABEAS CORPUS PETITION ATTACKING STATE CONVICTION OR SENTENCE  
PURSUANT TO 28 U.S.C. § 2254, OR § 2241**

## **I. INTRODUCTION**

**A. Purpose of Manual.** This manual is intended to assist litigants in the U.S. District Court for the Southern District of California who wish to file:

(1) a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody; or

(2) a petition under 28 U.S.C. § 2241 for writ of habeas corpus.

A petition under 28 U.S.C. § 2241 attacks the execution of a sentence (e.g., challenges parole, probation, or loss of good-time credits), rather than its validity, and should be filed in the district where the prisoner is confined.

A petition under 28 U.S.C. § 2254 attacks the validity of a state court conviction or sentence, and should be filed in the district where the prisoner was convicted.

**B. Clerk's Office Cannot Provide Legal Advice.** Please be aware that the Clerk's Office staff are prohibited from giving legal advice. 28 U.S.C. § 955. This includes:

- offering interpretations of rules;
- recommending a course of action;
- predicting a decision a judicial officer might make on any given matter;
- interpreting the meaning or effect of any court order or judgment.

**C. Disclaimer.** This handbook is intended only as a general guide. It does not take the place of the Federal Rules of Civil Procedure or the Local Rules of this Court. It does not relieve a *pro se* litigant of the responsibility of complying with the Court's Local Rules, the Federal Rules of Civil Procedure, or any other obligation imposed by the law.

**D. Obtaining a Copy of the Local Rules.** If your institution's law library does not have a copy of this Court's Local Rules, you can obtain a copy by sending your written request to: OFFICE OF THE CLERK, 880 FRONT STREET, ROOM 4290, SAN DIEGO, CALIFORNIA 92101-8900.

You must include the following items:

1. a letter requesting a copy of the Local Rules
2. a check for \$3.00 made out to *Clerk, U.S. District Court*; and
3. a large (at least 8½ x 11 inch) self-addressed stamped envelope.

**E. Representing Yourself.** Do not worry that your documents are not professionally written. The Court will take into consideration that you are proceeding without an attorney and are untrained in drafting legal documents. You should, however, make every effort to state your case in clear, concise terms.

**You should keep a copy for your records of any document filed with the court.**

**F. Do Not Mail Stuff To A Judge.** Except as otherwise provided by law, attorneys or parties to any action or proceeding shall not write letters to the judge, or otherwise communicate with the judge unless opposing counsel is present. All matters to be called to a judge's attention should be formally submitted.

Do not deliver or mail filings or documents directly to a judge or his or her law clerks unless the Court directs you to do so. Instead, all pleadings must be delivered or mailed to:

OFFICE OF THE CLERK  
880 FRONT STREET  
ROOM 4290  
SAN DIEGO, CALIFORNIA 92101-8900.

## **II. FILING FEES**

TYPE OF FILING	FILING FEE
Petition under 28 U.S.C. § <b>2254</b> for writ of habeas corpus by person in state custody.	<b>\$5.00</b>
Petition under 28 U.S.C. § <b>2241</b> for writ of habeas corpus.	<b>\$5.00</b>

## **III. TERMINOLOGY**

To familiarize you with words you will encounter frequently, the following is a brief alphabetical glossary of some legal terms:

**ANSWER** Document filed by Respondent in which Respondent addresses the claims raised in Movant's Motion or Petitioner's Petition.

**CLERK OF COURT** Officer appointed by court to work with chief judge in overseeing court's administration. Pleadings you want filed in a case should be addressed to the Clerk of Court, not to a judge or his or her law clerks.

**IN FORMA PAUPERIS** This is also referred to as "IFP." If you are unable to pay the filing fee associated with the type of action you are filing, you may fill out an IFP application requesting the Court to waive the filing fee. However, IF IFP IS GRANTED, IT DOES NOT ALLOW A PERSON TO OBTAIN FREE COPIES OR FREE SERVICES FROM THE CLERK'S OFFICE.

**FILING FEE** The \$5.00 filing fee associated with filing a Petition for Writ of Habeas Corpus can be paid by cash, personal check, cashier's check or money order. If you cannot afford to pay the filing fee you must complete and file an application to proceed in forma pauperis and submit it together with your petition.

**JURISDICTION** Jurisdiction of the court means the inherent power to decide a case, whereas "venue" designates the particular district in which a court with jurisdiction may hear and determine the case.

**MOTION** An application made to a court to obtain an order directing some act to be done in favor of the applicant (movant). For example someone might file a *Motion* for Appointment of Counsel or a *Motion* to Dismiss.

**MOVANT** One who makes a motion before a court.

**PETITION** A formal written request addressed to the court.

**PETITIONER** One who presents a formal written request to a court.

**PRO SE** For one's own behalf; in person. Appearing for oneself, as in the case of one who does not hire a lawyer and appears for himself in court.

**RESPONDENT** The person against whom action or relief is sought. The person who opposes the petition is called the "respondent."

**TRAVERSE** Simple and direct denial of material allegations contained in Respondent's Answer.

**VENUE** In federal courts, the term refers to the district in which the suit is brought.

#### **IV. WHERE SHOULD YOU FILE YOUR CASE?**

**A. Section 2254 Petition for Writ of Habeas Corpus by State Prisoner.** A state prisoner may file a petition for writ of habeas corpus in the United States District Court of either the judicial district in which the petitioner is presently confined or the judicial district in which he was convicted and sentenced. See 28 U.S.C. § 2241(d).

When a state habeas petitioner is challenging his underlying conviction or sentence, the district court of the district in which a petitioner was convicted and sentenced is a more convenient forum because of the accessibility of evidence, records and witnesses. Thus, it is generally the practice of the district courts in California to transfer habeas actions questioning state convictions to the district in which the petitioner was convicted. Therefore, *a state prisoner challenging the validity of his conviction or sentence should file a petition in the district in which he was convicted and sentenced.* Otherwise the state prisoner risks having his or her case transferred to the district of conviction and sentence.

California is divided into *four* judicial districts known as the Northern, Eastern, Central, and Southern Districts of California.

**(1) The Northern District** comprises the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma.

**(2) The Eastern District** comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

**(3) The Central District** has three divisions: The Eastern Division, which comprises the counties of Riverside and San Bernardino; The Western Division, which comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura; and, The Southern Division, which comprises Orange County.

**(4) The Southern District** comprises the counties of Imperial and San Diego.

## **V. MOVING TO PROCEED IN FORMA PAUPERIS**

If you cannot afford to pay the \$5.00 filing fee, follow the instructions that accompany the *Motion and Declaration under Penalty of Perjury in Support of Motion to Proceed in Forma Pauperis* Form.

## **VI. CHANGE OF ADDRESS NOTIFICATION**

You must keep the court and opposing parties advised of your current address. If mail directed to you by the court at your last designated address is returned by the Post Office, and if you fail to notify the court and opposing parties within 60 days thereafter of the your current address, the court may dismiss the action without prejudice for failure to prosecute.

Address changes must be made by notifying the Clerk's Office **in writing**. Please write: "Attn: Change of Address" on the envelope.

## **VII. OTHER DOCUMENTS**

### **A. General Information**

Whenever you file a document with the court you must always serve a copy on each of the parties and indicate at the end of the document, or by a separate certificate, that you have done so. (Fed. R. Civ. P. 4)

All documents filed with the Court should bear the correct civil action number if one has been assigned.

Sign all documents you filed with the Court. Place the words "Pro Se" after your name. Place your address on all documents.

### **B. Format of Documents**

1. Signature. Pursuant to Federal Rule of Civil Procedure 11, each pleading must be signed by the pro se litigant (or by at least one attorney of record).

2. Legibility. Each document filed, including exhibits where practicable, shall be: (a) in English, (b) flat and unfolded, (c) without backing sheet, and (d) plainly written, typed or legibly written.

3. Original and copies. The original of a document must bear an *original signature*; also, the original must be labeled "ORIGINAL". All copies are to be clearly identified as "COPY". Any copies must be identical to the original.

4. Exhibits. Except where compliance is not possible, exhibits shall be paginated in consecutive numerical order and each page shall show the exhibit number either immediately above or below the page number. Unless the physical nature of the exhibit renders it impracticable, exhibits shall be attached to the documents to which they belong and shall be readable without detaching the exhibit from the accompanying document.

5. Party Filing Document. Except as provided in the federal rules, or by leave of court, no document shall be filed in any case by any person who is not a party in the case.

#### 6. Copies:

a. The original of all documents, including exhibits attached thereto, shall be filed together with at least three legible identical copies for the court's use.

b. If parties presenting documents for filing request the clerk to return a conformed copy by U.S. Mail, an extra copy shall be submitted for this purpose and shall be accompanied by a self-addressed envelope bearing sufficient postage.

**7. Title Page.** The first page of every document shall contain the following information which may be single-spaced:

a. The name, address and telephone number of the attorney appearing for a party or of an individual appearing pro se, shall be printed or typewritten in the space to the left of the page's center and beginning at line one. The space to the right of the page's center shall be reserved for the clerk's filing stamp.

b. The title of the court shall commence at or below line eight of the first page unless the document is a court-provided form.

c. Below and to the left of the title of the court, the title of the action shall be inserted. In the space to the right of center the following will appear: The number of the action, a brief designation of the document's nature.

d. Names shall be typed or printed below signatures on documents.

**8. Paragraphing Pleadings.** Requests for relief shall be made in numbered paragraphs, each of which shall be limited, as far as is practicable, to a statement of a single set of circumstances.

## **VIII. GENERAL AND LOCAL RULES GOVERNING § 2254 PETITIONS**

### **A. Necessity of Exhausting Available State Court Remedies in §§ 2254 and 2241 Cases.**

A person who is incarcerated or is otherwise in custody pursuant to court order may wish to challenge the fact or duration of his or her confinement. Such a challenge would be brought as a petition for writ of habeas corpus against the person or entity who holds him or her in custody, e.g., the state prisoner's warden. If the person can successfully show that a constitutional right was violated, which would have otherwise prevented the incarceration or decreased the duration of the incarceration, the court will grant the writ of habeas corpus. In general, before such a petition can be filed in the federal court, however, the Petitioner must pursue and exhaust all available state law remedies. This means that if you want to challenge a conviction or sentence, you must exhaust your state court remedies under California law. This may be accomplished in two ways: (1) by direct appeal to the California Supreme Court, or (2) by a petition for writ of habeas corpus in the California Supreme Court. Only after you have fully pursued the available state law remedies will you be eligible to pursue a federal petition for writ of habeas corpus.

**B. One Year to File Petition.** Under the Antiterrorism and Effective Death Penalty Act of 1996 (Act), signed into law on April 24, 1996, a one-year period of limitation applies to a habeas petitions by state prisoners filed after April 24, 1996. See Act § 101, Pub. L. No. 104-132, 110 Stat. 1214, 1217 (to be codified at 28 U.S.C. § 2244(d)(1)(A)-(D)). The one-year limitation period runs from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 1997). “The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C.A. § 2244(d)(2)).

**C. Forms.** All petitions for writs of habeas corpus shall be legibly handwritten in ink or typewritten, and signed under penalty of perjury, and, if presented by persons in propria persona, upon the form and in accordance with the instructions approved by the court.

Copies of the forms and instructions shall be supplied by the clerk upon request. *A petition, motion or other filing may be stricken and not considered by the court unless it is submitted on the forms approved and supplied by the court.*

**D. Applicability of Local Rule 9.3.** Local Rule 9.3 governs the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, which does not involve the death penalty. A first petition for habeas corpus is the initial filing relating to a particular conviction or sentence and a later or amended filing if the original was not dismissed on the merits. These rules shall supplement the Rules Governing § 2254 Cases, which can be found at 28 U.S.C., following section 2254. In these cases, an original and four (4) copies of the petition shall be filed by the petitioner.

**E. Venue.** The provisions of 28 U.S.C. § 2241(d) provide for the filing of petitions in more than one judicial district. However, this court will make an independent determination of whether venue is appropriate in this district.

**F. Assignment to Judges.** The petition will be assigned to a district judge and a magistrate judge. In accordance with Local Rule 74.0 and 28 U.S.C. § 636(b), the magistrate judge shall conduct any and all of the duties specified in Rule 8 of the Rules Governing § 2254 Cases.

**G. Procedures for Considering the Petition.** Unless a judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedures shall apply, subject to modification by the magistrate judge assigned the petition.

1. Requests for Enlargement of Time. Written requests for enlargement of any time period in this rule or the Rules Governing § 2254 Cases shall be made before the expiration of the time period to be extended and shall show good cause for the extension. The request for an enlargement of time must be served on the opposing party and a proof of service filed. Fed. R. Civ. P. 5.

2. Order to Respond. If so ordered, Respondent will file an answer or other responsive pleading to the petition with accompanying points and authorities within the time period stated in an order to respond. If an answer is filed, Respondent will include in the answer the items

described in Rule 5 of the Rules Governing § 2254 Cases and shall attach any other relevant documents not already filed.

**3. Traverse.** Within thirty (30) days after Respondent has served the Answer, unless the court orders otherwise, Petitioner may file a Traverse (reply memorandum). Although Petitioner may file a Traverse to Respondent's Answer, Rule 5, and the general procedure set up by the entire set of rules following § 2254, "does not contemplate a traverse to the answer, except under special circumstances." Rule 5, 28 U.S.C. foll. § 2254 advisory committee notes. "In actual, practice, the traverse tends to be a mere pro forma refutation of the [answer], serving little if any expository function. In the interests of a more streamlined and manageable habeas corpus procedure, it is not required except in those instances where it will serve a truly useful purpose." Id.

**4. Discovery.** No discovery shall be had without good cause and leave of the court.

**5. Request for an Evidentiary Hearing.** Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse, or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of the evidence the party proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the service of the request. The court will then determine whether an evidentiary hearing will be held.

**H. Evidentiary Hearing.** If an evidentiary hearing is held, the court may order the preparation of a transcript of the hearing. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

**I. Dispositive Rulings on The Merits.** In accordance with Local Rule 74.0 and 28 U.S.C. § 636(b), the magistrate judge shall submit to a district judge proposed findings of fact and recommendations for disposition. The magistrate judge shall file proposed findings and recommendations with the court and a copy shall be mailed to all parties. Within the time period stated by the court, any party may serve and file written objections to the report and recommendations by timely filing an original and one (1) copy of the objections and a proof of service showing that the objections were served on the opposing party. Fed. R. Civ. P. 5. The district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which an objection is made. A district judge may accept, reject, seek clarification or modify in whole or in part any findings or recommendations made by the magistrate judge. The district judge may also issue a separate written opinion which will be filed or state an oral opinion on the record in open court, which shall be promptly transcribed and filed.